IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 657 (MS) OF 2006

Rakesh Chandra Joshi, S/o Sri Bhuwan Chandra Joshi, R/o Mohalla Paniya Udiyar, Almora District Almora.

.....Petitioner.

Versus

1. Sri Devendra Singh Rawat, S/o late Sri Bhupal Singh Rawat, R/o Mohalla Rawatpur, Laxmeshwar, Almora.
2. Sri Birendra Singh Rawat, S/ Sri Lal Singh Rawat, R/o Rawatpur, Laxmeshwar, Almora.
3. District Judge, Almora, District-Almora.

.....Respondents.

Dated: 28.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Tiwari, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 17th May, 2006 passed by the District Judge Almora in Misc. Civil Appeal No. 4 of 2006.

Briefly stated, the petitioner has claimed himself to be the bonafide purchaser of 5 Mutthi of Land. After purchasing the land according to the case of the petitioner, he moved an application for demarcation before the Sub Divisional Officer Assistant Collector 1st Class.

The respondent no. 1 has filed a suit being Civil Suit No. 11 of 2006 in the court of Civil Judge (Junior Division),

Almora and claimed the relief for cancellation of the sale deed dated 25th June, 2004 as well as for the relief of permanent injunction. The application for interim injunction was rejected by the Civil Judge (Junior Division).

The respondent has preferred an appeal. The appellate Court has passed the order allowing the application partly. By partly allowing the application, the appellate Court has directed not to create any third party interest in the property during the pendency of the suit and further no new constructions were allowed to be raised.

The appellate Court has also directed that whatever constructions have already been raised can be utilized by the petitioner after getting it completed.

During the pendency of the case, the Commissioner was appointed by this Court and the Commissioner has reported to the following effect:-

"5 (ii) That the height of the lintel is approximately 4.10 mts. Above the platform of the constructiona t the northern extreme of the construction while the height of the lintel is approximately 3.28 mts. Abvoe the platform of the construction at the southern extreme. The platform is elevated by .35 mts. From thue road level on the northern extreme while the platform is at road level at the southern extreme.

(vi) That the width of the construction at the 1st Floor Level is about 3 mts. (exclusive of the projection of .65 mts.) on the northern extreme and 2.60 mts (exclusive of the projection of .65 mts) on the southern extreme.

(viii) That the construction starts at a distance of 14 mts. from the southern extreme of plot no. 6244.

(ix) That the total length (along the road) of plot no. 6244 is about 47.3 (inclusive of the construction)."

Photographs have also been annexed by the Commissioner showing the construction on the spot and only lintel has to be put. The appellate Court in his order has directed as under:-

"प्रतिवादी नं0 1 को वर्णित किया जाता है कि वह वादउ के दौरान विवादग्रस्त सम्पत्ति को किसी अन्य व्यक्ति के पक्ष में हस्तान्तरित न करें। साथ ही साथ प्रतिवादी को यह भी वर्जित किया जाता है कि विवादग्रसत सम्पत्ति पर कोई भी नई तामीरात न करें। परन्तु जो तामीरात उसके द्वारा की जा चुकी है, उसे ठीक करने एवं की जा चुकी तामीरात को इस्तेमाल करने के लिये वह वाद में किये गये निर्णय के अधीन सवतन्त्र होगा।

पत्रावली तुरन्त अवर न्यायालय को इस निर्देप्र के साथ वापस भेजी जाती है कि वह वाद को गुण–दोष के आधार पर शीघ्रातिप्रीघ्र निस्तारित करें।"

As will appear form the order passed by the appellate Court that the appellate Court was also aware of this fact that constructions have already been raised and as such he has been directed to the following effect:-

"परन्तु जो तामीरात उसके द्वारा की जा चुकी है, उसे ठीक करने एवं की जा चुकी तामीरात को इस्तेमाल करने के लिये वह वाद में किये गये निर्णय के अधीन स्वतन्त्र होगा।"

The intention behind the court in passing the injunction order was that the structure which is lying on the spot should be completed and no fresh construction should be allowed to be raised during the pendency of the suit.

The suit was filed in the year, 2006 and it is not an old one, but in case the entire construction work is stopped the building material lying on the spot for putting the lintel will cause an irreparable injury to the petitioner and as such looking to the circumstances of the present case, permit the petitioner is permitted to complete the lintel alone. Further the petitioner may also not alienate the property during the

pendency of the suit. However, the trail court shall decide the suit itself within a period of six months till then the parties are directed to maintain status quo except the lintel part.

Subject to the aforesaid observations, writ petition is disposed of.

No order as to costs.

(Rajesh Tandon, J.)

28.06.2006
Rathor